

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHRISTOPHER ROBINSON,

Plaintiff,

v.

Civil Case No. 14-11987
Honorable Linda V. Parker

STEPHEN ANDREWS, TANZI COLE TABB,
MICHAEL HUGES, MICHELE R. SPIVEY,
DAVID BEATY, JOSEPH GONZALEZ, CHERYL
EVANS, RYAN P. SMITH, JAMES B. ROBERTSON,
JOAN YOUKINS, STEPHAN ANDREWS,
SHAWN BOOTH, MICHIGAN DEPARTMENT OF
CORRECTIONS, LUANNE M. REAUME,
CATHOLIC SOCIAL SERVICES, PITTSFIELD TWP.
POLICE DEPARTMENT, JOHN RUBITSHUM,
KYRA BENNETT, and JIM MAUDLIN,

Defendants.

_____/

**OPINION AND ORDER ADOPTING IN PART AND REJECTING IN
PART MAGISTRATE JUDGE'S JULY 29, 2015 REPORT &
RECOMMENDATION [ECF NO. 125] AND GRANTING DEFENDANTS'
MOTIONS TO DISMISS [ECF NOS. 45, 62, & 74]**

On May 19, 2014, Plaintiff commenced this action against Defendants pursuant to 42 U.S.C. § 1983.¹ Plaintiff's claims against Defendants arise from his arrest for an alleged parole violation, the revocation of his parole, and events that

¹ Plaintiff amended his complaint on July 2, 2014, adding parole agent Kyra Bennett and police officer Jim Maudlin as Defendants. (ECF No. 18.)

occurred after he was re-paroled in May 2011. The matter has been referred to Magistrate Judge Michel Hluchaniuk for all pretrial matters. (ECF No. 40.)

On September 25, 2014, Defendants Michigan Department of Corrections (“MDOC”) and MDOC employees Michele Spivey and Cheryl Evans, filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF No. 45.) On October 31, 2014, Defendants Kyra Bennett, Michael Huges, John Rubitshum, and Ryan Smith filed a motion to dismiss or, alternatively, for summary judgment. (ECF No. 62.) Defendant Joan Youkins filed a motion to dismiss as well on December 2, 2014. (ECF No. 74.) On July 29, 2015, Magistrate Judge Hluchaniuk issued an R&R in which he recommends that the Court grant all three motions. (ECF No. 125.)

Magistrate Judge Hluchaniuk first concludes that Plaintiff’s claims against Defendants Spivey, Evans, Youkins, and Rubitshum are barred by the doctrine in *Heck v. Humphrey*, 512 U.S. 477, 484 (1994). (ECF No. 125 at 22-25.)

Magistrate Judge Hluchaniuk next concludes that the Eleventh Amendment bars Plaintiff’s claims against all Defendants in their official capacities. (*Id.* at 25-26.) Applying the statute of limitations applicable to § 1983 claims, the magistrate judge next holds that Plaintiff’s claims against Defendants Spivey, Evans, Youkins, and Rubitshum are time-barred. (*Id.* at 26-29.) Because Plaintiff alleges

no personal involvement in the misconduct alleged in his complaint by Defendant Ryan Smith, Magistrate Judge Hluchaniuk next recommends that this Court dismiss Plaintiff's claim against him. Lastly, Magistrate Judge Hluchaniuk concludes that Plaintiff's claims against Defendants Michael Huges and Kyra Bennett must be dismissed because Plaintiff failed to exhaust his administrative remedies as required by MDOC's policies. (*Id.* at 30-35.)

At the conclusion of the R&R, Magistrate Judge Hluchaniuk informs the parties that they must file any objections to the R&R within fourteen days of service. (*Id.* at 35-36.) He further specifically advises the parties that "[f]ailure to file specific objections constitutes a waiver of any further right to appeal." (*Id.* at 35.) Neither party has filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Hluchaniuk, with the exception of his conclusion that Plaintiff's claims against Huges and Bennett should be dismissed *with* prejudice. Under the Prison Litigation Reform Act, a dismissal for failure to exhaust non-judicial remedies is without prejudice. *Boyd v. Corrections Corp. of Am.*, 380 F.3d 989, 994 (6th Cir. 2006) (citations omitted). The Court therefore adopts in part and rejects in part Magistrate Judge Hluchaniuk's July 29, 2015 Report and Recommendation.

Accordingly,

IT IS ORDERED that the Motion to Dismiss filed by Defendants Michigan Department of Corrections, Cheryl Evans, and Michele R. Spivey (ECF No. 45) is **GRANTED** and Plaintiff's claims against these defendants are **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that the Motion to Dismiss filed by Defendants Kyra Bennett, Michael Huges, John Rubitshum, and Ryan P. Smith (ECF No. 62) is **GRANTED** and Plaintiff's claims against Defendants Rubitshum and Smith are **DISMISSED WITH PREJUDICE** and Plaintiff's claims against Defendants Bennett and Huges are **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that the Motion to Dismiss filed by Defendant Joan Youkins is **GRANTED** and Plaintiff's claim against this defendant is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that Defendants Michigan Department of Corrections, Michele R. Spivey, Cheryl Evans, Kyra Bennett, Michael Huges, John Rubitshum, Ryan P. Smith, and Joan Youkins are **DISMISSED AS PARTIES TO THIS ACTION**.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: September 16, 2015

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, September 16, 2015, by electronic and/or U.S. First Class mail.

s/ Richard Loury
Case Manager